

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 92 OF 1990

The Commissioner of Income-tax,
Bombay City-VI, Bombay.

...Applicant

V/s.

M/s. Ingersoll Rand (India) Ltd.

...Respondent

Mr.Parag Vyas for Applicant.

Mr.P.J. Pardiwala i/b. M/s.Crawford Bayley & Co. for
Respondent.

**CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.**

DATED : AUGUST 12, 2005.

P.C. :-

. By this reference under Section 256(1) of the Income Tax Act, the Income Tax Appellate Tribunal has referred the following questions of law arising out of the order passed for the assessment year 1975-76 for the opinion of this Court :-

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the re-assessment made u/s.147(b) of the I.T. Act 1961 for the assessment year 1975-76 is not valid ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the order of the Commissioner of Income-Tax u/s.263 proceedings for the assessment year 1974-75 had not applied any principles of law and such order cannot be said to be 'in formation' within the meaning of sec.147(b) of the I.T.Act 1961 and that there was no justification for the I.T.O. to initiate action u/s.147(b) of the Act, 1961 ?"

2. The present reference is made by the Revenue is for the assessment year 1975-76 whereas the order of the Tribunal dated 13th June, 1983 from which the present reference arises was for the assessment years 1973-74, 1975-76. Since common questions raised, the Tribunal decided the appeal by common orders. As already stated, the reference being only for the assessment year 1975-76, in this view of the matter, it is clear that there is no reference for the assessment year 1973-74 meaning thereby the very same order of the Tribunal for the assessment year 1973-74 has been accepted by the

Revenue.

3. In that view of the matter, the order from which the reference arises will operate as resjudicata between the parties. Apart from this, if the department has accepted the finding of the Tribunal for assessment year 1973-74, then it was not open for the revenue to seek reference for the assessment year 1975-76.

4. In the light of the law laid down by the Apex Court in the case of **Berger Paints India Ltd. v. Commissioner of Income Tax, (2004) 266 ITR 99**, the reference accordingly stands returned without any answer.

(A.S. AGUIAR, J.)

(V.C. DAGA, J.)